



Ninety-Seventh Legislature - First Session - 2001
Committee Statement
LB 384

Hearing Date: 2/6/2001

Committee On: Urban Affairs

Introducers: (Quandahl, Bruning, Cudaback, Kristensen, Redfield, Wickersham, Dw. Pedersen)

Title: Prohibit use of condemnation for certain utility property

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

5 Yes Senators Erdman, Hartnett, Preister, Quandahl & Redfield

2 No Senators Connealy & Janssen

Present, not voting

Absent

Proponents:

Senator Quandahl

Letters

Daniel Watson

Richard Loomis

David Bruggeman

Jim Pappas

Gary Reber

Representing:

Introducer

KN Energy / Kinder Morgan

UtiliCorp, Peoples

Village of Roseland

Northwestern

Alltel

Opponents:

Gary Lay

Jack Sutton

Dennis Baumert

Paul Erickson

Michael Nolan

Lynn Rex

Representing:

NE Municipal Power Pool

City of Fremont

Mayor of Scribner

City of Wahoo

City of Norfolk

League of NE Municipalities

Neutral:

Charles Humble

Representing:

LES

Summary of purpose and/or changes:

This bill deals with the condemnation of public utility property by a city or village, proposing to prohibit such condemnations under specified circumstances. It is applicable to cities of all classes and villages.

Essentially, this act would prohibit a city or village from condemning public utility property if the city or village conducting the condemnation proposes to use the property for the same purpose as the public utility was using it prior to the condemnation. The only exception is if the condemnation is for the purpose of acquiring an “access” easement or right-of-way across the utility property.

This bill would enact a single new section of statute.

Subdivision (1) provides generally that no city or village may condemn the property of a public utility if such property is “used or useful” in providing utility service and the city or village seeking to condemn the property will use the property for the same or a substantially similar purpose to that utility purpose.

Subdivision (2) provides the sole exception to subdivision (1): the property may be condemned if the public purpose supporting the condemnation is the acquisition of a nonexclusive easement or right-of-way across the utility property and the acquisition will not materially impair the utility from any future expansion of its facilities on the property.

Subdivision (3) provides that the act applies to all cities and villages in the state, incorporated and “unincorporated” (sic), notwithstanding any other provisions of law.

Subdivision (4) provides that if the specific conditions specified in subdivision (1) of this Act are not present, this section does not limit the condemnation powers otherwise possessed by the city or village.

Explanation of Amendments: The original bill posed several problems. It lacked specific definitions of key terms and was not “tied into” or referenced to existing statutes governing municipal condemnation. Further, while the intent of the legislation was to restrict municipal condemnations of natural gas utilities, the bill's scope was far beyond that narrow intent.

The committee amendments strike all of the existing provisions of the bill and substitute a new act entitled the “Municipal Natural Gas System Condemnation Act” which would govern the exercise of the power of eminent domain by municipalities to take over natural gas utilities. The scope of the bill is restricted to primary, first, and second class cities and villages.

The proposed new act reflects two major policy shifts from existing law.

First, under current law, cities and villages have unfettered discretion in exercising the power of eminent domain to take over a natural gas utility: there is no restriction based upon the reasons or purpose for the taking. Having decided to do so, for whatever reason, the city or village may proceed subject only to voter approval.

The committee amendment establishes standards governing when eminent domain may be exercised for this purpose. In section 3, it sets out four criteria which must be met before a municipality may proceed to condemn a natural gas system:

1) The existence of a course of conduct by the natural gas utility which evidences its unfitness to operate the system for the benefit of ratepayers or in the general public interest;

2) That efforts to remedy the situation through existing regulatory or other legal means have failed or proven inadequate;

3) That the acquisition of the system by the city will provide significant positive benefits to the natural gas ratepayers in the city; and

4) That the benefits from the acquisition to the ratepayers equal or exceed the costs of the acquisition which will be paid by the ratepayers.

Unless these four criteria are met, the city does not have the authority to pursue the condemnation.

Secondly, under current law, the voters are required to give their approval to the condemnation before the formal process begins, most significantly, before a value is placed on the system and the voters are informed of the cost involved.

The committee amendments would place the vote of the people at a later stage in the process, after the original court of condemnation has set a value, or after that value has been reviewed by the district court following an appeal from the ruling of the court of condemnation. Thus, the new act provides for "informed consent" by the voters: when they vote upon approval of the taking, they will know the costs involved as determined by a court (or courts) of competent jurisdiction.

In other respects, the new act generally mirrors existing law regarding condemnation by municipalities.

Section-by-Section Summary of Committee Amendment

All existing provisions of LB 384 are stricken and the following is substituted:

Section 1 - Sections 1 to 18 are the "Municipal Natural Gas System Condemnation Act.

Section 2 - This act provides the exclusive statutory authority for the condemnation of a natural gas system by a city: only by following the provisions of this act can a city acquire a natural gas system by eminent domain.

Section 3 - Sets out the four criteria which must be met before a city can takeover a natural gas system:

(a) The gas company must have engaged in a course of conduct which indicates its unfitness to operate the gas system for the benefit of the ratepayers or the general public interest;

(b) The city must have failed in its efforts to end that course of conduct by regulatory or other legal means;

(c) The acquisition of the system and its operation by the city will provide significant positive benefits for ratepayers; and

(d) The benefits to ratepayers will equal or exceed the additional costs to be paid by the ratepayers resulting from the acquisition.

Section 4 - Definitions.

Section 5 - First step in the process: the city adopts a preliminary resolution of intent indicating its desire to condemn the gas system and order the preparation of a formal Resolution to Pursue Acquisition.

Section 6 - What elements must appear in the formal Resolution: a full and accurate description of the property to be taken by condemnation and facts supporting the existence of each of the 4 pre-requisites to taking set out in section 3.

Section 7 - The formal Resolution is presented to the governing body and it sets a date for a public hearing on the resolution (forty-five days later or more) when the public and the utility can address items in the resolution.

Section 8 - After the public hearing, the governing body can adopt the draft Resolution or an amended version, thus formally initiating the condemnation process.

Section 9 - After a "waiting period" of fifteen days (to give the utility an opportunity to challenge the validity of the taking) the clerk sends the Resolution to the Chief Justice of the Supreme Court who appoints three district judges to serve as a court of condemnation to set a value on the system. This section also sets out some of the basic powers of this court of condemnation.

Section 10 - The proceedings of the court of condemnation and how its is paid.

Section 11 - Additional powers and duties of the court of condemnation.

Section 12 - When the value of the system is set by the court of condemnation, the city can abandon the proceedings (give up on pursuing condemnation, something which the governing body of the city can vote to do at any point before it takes physical possession of the gas system) or appeal the value set by the court to the district court. If it continues to pursue the condemnation but does not appeal, the utility can, if it wishes pursue its own appeal to the district court. The appeal is on the record made before the court of condemnation: no new evidence is presented, but the district court reaches its own independent determination of the value of the system based on that record.

Section 13 - If unsatisfied by the district court judgment, the city or the utility (or both) may appeal to the Court of Appeals.

Section 14 - If the court of condemnation judgment is not appealed from or the district court has entered its final judgment (regardless of whether or not further appeals to the Court of Appeals are pending), the governing body may place the issue of pursuing the acquisition to the qualified voters of the city: the city cannot takeover the system unless the takeover is approved by the voters. The ballot must contain some general descriptive information, but the language to be used in the ballot question itself is specifically set out and requires that the actual dollar amount of the cost for taking over the system (as determined by the court) be set out. The issue may be placed on a general or special election ballot.

Section 15 - If the issue is placed on a special election ballot, 60% of those voting must approve the takeover to authorize the city to take possession of the system. If the issue is placed on a general election ballot, a majority of those voting must approve. After the election result is certified, the city may tender the amount of the award to the gas company and takeover the system even though appeals are pending.

Section 16 - If the proceedings are abandoned or the matter fails at the ballot box, a new proceeding to acquire the same system cannot be initiated for twenty-four months.

Section 17 - Bonds to be issued by a city to pay for a gas system takeover need not be approved by the voters of the city.

Section 18 - Authorizes condemnations of portions of utility property without the need for complying with all provisions of the act if the acquisition is only for right-of-way purposes and will not interfere with the current utility use of the property.

Section 19 - Amends Sec. 16-645 to remove from its purview actions conducted pursuant to this act, adding a reference to this act.

Section 20 - Amends Sec. 16-674 to remove from its purview actions conducted pursuant to this act, adding a reference to this act.

Section 21 - Amends Sec. 17-559 to remove from its purview actions conducted pursuant to this act, adding a reference to this act.

Section 22 - Amends Sec. 19-701 to repeal the authority to condemn gas systems under current state law.

Section 23 - Amends Sec. 19-709 to add a reference to the Municipal Natural Gas System Condemnation Act.

Section 24 - Amends Sec. 76-703 to add an exception to its provisions for actions conducted pursuant to this act.

Section 25 - Repealer.

Senator D. Paul Hartnett, Chairperson
